

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000237-001 DT

06/07/2005

HONORABLE MARK R. SANTANA

CLERK OF THE COURT
K. Wendroff
Deputy

FILED:_____

PHOENIX CAPITAL GROUP
HARRIS & MACNEIL LLP

v.

POINT TO POINT BROKERAGE (001)

ELLIOT S ISAAC

REMAND DESK-LCA-CCC

MINUTE ENTRY

JURISDICTION

This Court has jurisdiction pursuant to Article VI of the Arizona Constitution and A.R.S. § 12-124(A).

FACTS

Appellant Point to Point Brokerage ("PTP") appeals from a default judgment entered against it in the North Valley Justice Court. PTP asserts that it was never properly served with the summons and complaint and that it did not receive a copy of the notice of entry of default. PTP contends that the judgment is therefore void. PTP also argues that it should be relieved of the default judgment pursuant to A.R.C.P. Rule 55 (c) and 60 (c) due to excusable neglect.

The complaint and summons were served on PTP's statutory agent, Corporation Service Company (CSC) on June 21, 2004. PTP argues that CSC was not its statutory agent. But the records of the Arizona Corporation Commission (ACC) establish that PTP appointed CSC as its statutory agent in 1991 and that CSC remained the statutory agent through August 2004.

CSC apparently forwarded the summons and complaint to PTP by express delivery. That delivery was made to the address identified in the ACC records as being PTP's domestic address, 8766 E. Shea Boulevard. CSC had identified PTP's accountant as a person with signature authority for PTP. An individual, apparently not authorized to sign for PTP, S. Patel, signed for

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the documents. PTP asserts, without a supporting affidavit, that Patel did not provide the documents to PTP.

Plaintiff's affidavit of service for its application for default and motion for entry of default indicates that this application was mailed to PTP on July 23, 2004 to 8766 E. Shea Boulevard. PTP also argues that it did not receive the notice of default. But the record does not contain an affidavit supporting this assertion.

DISCUSSION

A. Is the Judgment Void?

The record establishes that the complaint and summons were properly served upon PTP's statutory agent. Moreover, the application for entry of default was mailed to the address identified in the ACC records as PTP's correct address. A.R.C.P. Rule 55(a) provides that the application be "mailed to the party claimed to be in default." Mailing to the location which PTP identified in the Arizona's public records as its local address meets this requirement. PTP's argument that the judgment is void is not supported by the facts. The judgment is valid.

B. Should be judgment be set aside for excusable neglect?

PTP's other contention is that CSC failed to obtain the signature of an individual authorized to accept documents on defendant's behalf. As a result, PTP asserts that CSC never received the summons and complaint. PTP argues that this sequence of events constitutes excusable neglect pursuant to A.R.C.P. 55 (c) and 60(c), requiring the vacating of the judgment. The applicable law and current record do not support PTP's position.

When service on a corporation is made upon its statutory agent, the service is deemed complete at that time; even when the agent does not forward the summons and complaint to the principal. See W. Coach Corp v. Mark V. Mobile Home Sales Inc., 23 Ariz. App. 546, 549, 534 P.2d 760, 763 (1975). See also, Barlage v. Valentine, 110 P.3d 371 (Ct. App.2005). The party asserting excusable neglect must demonstrate that the agent's failure to notify the defendant was the result of excusable neglect. Mere carelessness by the agent in not notifying the principal of the complaint does not constitute excusable neglect Lynch v. Arizona Enterprises Min Co., 20 Ariz. 250, 179 P. 956 (1919).

PTP has not submitted affidavits or other admissible evidence to support its claim that CSC's alleged failure to deliver the complaint and summons to PTP constitutes excusable neglect. The record indicates that the service and complaint were properly served upon PTP's statutory agent and that the agent forwarded those documents to PTP at its local address. PTP apparently did not receive the documents. PTP did not submit affidavits from CSC or its delivery service setting forth why the summons and complaint were given to Patel. The alleged misdelivery may have been caused by carelessness, rather than excusable neglect. This record is factually insufficient to justify a finding of excusable neglect.

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CONCLUSION

The Court concludes that the judgment is not void and there is no basis for setting aside the judgment for excusable neglect.

IT IS ORDERED:

- (1) Denying the PTP's request that the judgment be vacated;
- (2) Affirming the judgment entered by the North Valley Justice Court;
- (3) Returning this matter to the North Valley Justice Court for all further proceedings.